

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

JOHN T. NIX

PLAINTIFF

v.

Civil No. 6:19-CV-06014

DR. N. VOWELL, *et. al.*

DEFENDANTS

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Before this Court is Defendants’ Suggestion of Death advising that Plaintiff, John T. Nix, died on May 3, 2019. (ECF No. 24).

Rule 25 of the Federal Rules of Civil procedure governs the substitution of parties after death, and it provides in part, “[i]f the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). The Advisory Committee Notes for this rule make clear that the time does not begin to run until the death is suggested on the record by service of a statement of the fact of death. *Id.* In the present case, Defendants’ counsel filed a Suggestion of Death on May 28, 2019. (ECF No. 24). Plaintiff’s successor or personal representative had 90 days from that date, or until August 26, 2019, to file a motion to substitute. No such motion to substitute has been filed with the Court.

Accordingly, the undersigned recommends that this case be dismissed pursuant to Fed. R. Civ. P. 25(a).

The parties have fourteen (14) days from receipt of the Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Plaintiff is reminded

that objections must be both timely and specific to trigger de novo review by the District court.

DATED this 5th day of September 2019.

/s/ Mark E. Ford

HON. MARK E. FORD
UNITED STATES MAGISTRATE JUDGE